

## **REMARKS**

This communication is a full and timely response to the Office Action dated January 9, 2009. Claims 1-32 remain pending. By this communication, claims 1-3, 5, 11, 12, 14-16, 18, 33, and 34 are amended. Reconsideration and allowance of the pending claims are respectfully requested.

### **Interview Summary**

Applicant thanks Examiner Astorino and Vidovich Gregory for the interview conducted on February 2, 2009. In the interview, suggestions for overcoming the 35 U.S.C. §101 rejections were primarily discussed. Applicants primarily argued that the claims in their current form are tied to structure, and that the specification adequately discloses structural features of the claimed invention. The Examiner relied substantially upon arguments previously made on pages 2-3 of the current Office Action in arguing that the claims in their current form neither (1) are tied to another statutory category (such as a particular apparatus), nor (2) transform underlying subject matter to a different state or thing. The Examiner further argued that it is unclear if the recited modules are hardware or software, for example. However, the Examiner agreed that if the claims were amended to recite structural components of the corresponding subject matter in accordance with the specification, then the claims as amended may overcome the rejections. Applicants have amended the claims as suggested by the Examiner.

**Rejection Under 35 U.S.C. §101**

Claims 1-32 were rejected under 35 U.S.C. §101 because the claimed invention is allegedly directed to non-statutory subject matter. In particular, the Office asserts that the claims neither (1) are tied to another statutory category (such as a particular apparatus), nor (2) transform underlying subject matter to a different state or thing. Applicants respectfully traverse this rejection.

Applicants have amended the claims to more clearly recite structural components of the corresponding subject matter. As such, Applicants contend that the claims as amended are clearly tied to a statutory category (i.e., machine or apparatus). It is therefore respectfully requested that this rejection be withdrawn. It should now be abundantly clear that the method and apparatus are tied to an electrical device, and not merely a set of human interactions.

With respect to the emotional response being variable between people and/or the same people over time, it should be noted that the claimed subject matter includes changing the "emotion induction protocol" in response to measured physiological responses. One protocol need not fit all, or even one all of the time, but would still result in the selected emotion being induced for the vast majority of people. Emotionally unstable or mentally disabled people might not be responsive, in predictable ways, but the patent laws of the U.S. have never required that all products be absolutely perfect; drugs can cause allergic reactions, silicon wafers can have defects, etc., without calling into question the patents that cover them. The fact remains the Applicants have signed a declaration attesting to the fact that protocols and the changing of protocols, lead to repeatable real-life results, the Office's

speculation notwithstanding. Should the Office deem otherwise, a declaration by the Examiner suggesting that the generally population is emotionally unstable would seem to be required. No such declaration seems appropriate and Applicants respectfully request withdrawal of this rejection.

**Rejections Under 35 U.S.C. §112**

**35 U.S.C. §112 - 1st paragraph**

Claims 1-32 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement. In particular, the Office asserts that it is unclear if the recited "modules" are hardware or software. Applicants respectfully traverse this rejection for at least the same reasons presented with respect to the rejection of claims 1-32 under 35 U.S.C. §101.

As discussed above, Applicants have amended the claims to more clearly recite the structural components. For example, the term "modules" have been amended to the term "device" and many other changes which emphasize the structural nature of the claimed invention. Therefore, Applicants respectfully request that the rejection of claims 1-32 under 35 U.S.C. §112 be withdrawn for this and the reason given above.

**35 U.S.C. §112 - 2nd paragraph**

Claims 1-14 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office asserts that it is unclear if the recited modules are software or algorithms, or if the modules require structure.

Applicants respectfully traverse this rejection for at least the same reasons presented with respect to the rejection of claims 1-32 under 35 U.S.C. §101 and under 35 U.S.C. §112, first paragraph.

**Conclusion**

Based on at least the foregoing amendments and remarks, Applicants submit that claims 1-32 are allowable, and that this application is in condition for allowance. Accordingly, Applicants request a favorable examination and consideration of the instant application. In the event the instant application can be placed in even better form, Applicants request that the undersigned attorney be contacted at the number below.

Respectfully submitted,

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